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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/030,237 | 05/23/2002 | John Frederick Kemp | HCM-019US | 5866 |
| 959 | 7590 | 08/10/2004 | EXAMINER | |
| LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109 | | | NGUYEN, HOANG M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3748 | |

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/030,237 | KEMP, JOHN FREDERICK |
| Examiner | Art Unit | |
| Hoang M Nguyen | 3748 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 June 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 11-15 and 17 is/are rejected.
- 7) Claim(s) 9-10 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's amendment dated June 01, 2004, has been fully considered.

Applicant has argued that Fadden does not teach the claimed invention because ambient air is admitted to chamber 50 through inlet manifold 60, and the inlet of the chamber 50 does not face the wave. It's noted that Applicant did not understand the Examiner's position by making that argument. The whole 102 rejection is quoted herein " Fadden Jr. discloses a chamber floating on water comprising vertical side plates 10 forming a chamber with inlet 12, and exhaust through exhaust manifold 66, the Examiner is taking the position that the side walls defining chambers 50 are the baffles as claimed because said walls are static and used to direct fluid to the manifold. Regarding claim 2, Fadden Jr. discloses on column 5, lines 35-52 the concept of forcing compressed air into manifold 66. Regarding claims 4-6, the chamber in Fadden Jr. is elongate and inherently has top wall, bottom wall. Regarding claims 7, 13-14, the walls of chambers 50 are located near the exhaust manifold.". Please note the Examiner's position is that the chamber includes the inlet 12, the walls 10, and walls 28-30 all the way to vertical wall 82, ALL CHAMBERS 50 are inside that big chamber, and the walls of chamber 50 are considered the baffles as claimed.

Regarding the argument that air in the chamber 50 is only from the intake manifold 60. The Examiner strongly disagrees because when the wave flows into the big chamber, then it would carry air into the chamber as well. Also, the claims fail to

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recite where the air come from, and even if the claims do, Fadden teaches that concept anyway.

For the reasons set forth above, this Office Action has been made final.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 11, 13, 14-15, 17, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3685291 (Fadden, Jr.).

Fadden Jr. discloses a chamber floating on water comprising vertical side plates 10 forming a chamber with inlet 12, and exhaust through exhaust manifold 66, the Examiner is taking the position that the side walls defining chambers 50 are the baffles as claimed because said walls are static and used to direct fluid to the manifold. Regarding claim 2, Fadden Jr. discloses on column 5, lines 35-52 the concept of forcing compressed air into manifold 66. Regarding claims 4-6, the chamber in Fadden Jr. is elongate and inherently has top wall, bottom wall. Regarding claims 7, 13-14, the walls of chambers 50 are located near the exhaust manifold.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 12, are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 3685291 (Fadden, Jr.). Fadden, Jr. discloses all the claimed subject matter as set forth above in the rejection of claim 1, but does not disclose that the baffle is taper the side plates are adjustable. However, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the chamber to include a tapering baffle and the side plates being adjustable for ease of adjusting the chamber volume and to control the buoyancy of the chamber.

Claims 9-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

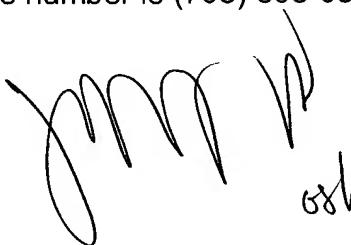
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Nguyen whose telephone number is (703) 308-3477. The examiner can normally be reached on Monday--Thursday from 7:30 AM to 6:00 PM.

Any inquiry concerning any general questions regarding patent examining policies and procedures should be directed to Patent Assistance Center (PAC) at 800-PTO-9199 or (703)-308-HELP (703)-308-4357), or Customer Service of TC 3700 at (703) 306-5648.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion, can be reached on (703)-308-2623. The fax phone number for the Examiner is (703) 746-4559.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.


68136109

HOANG NGUYEN
PRIMARY EXAMINER
ART UNIT 3748

Hoang Minh Nguyen
August 6, 2004